

Joseph A. Vogel (JV-5533)
KRAVET & VOGEL, LLP
1040 Avenue of the Americas, Suite 1101
New York, New York 10018
Tel. 212-997-7634
Fax: 212-997-7686
E-mail: jvogel@kvnyc.com

*Attorneys for Defendant
JMB Apparel Designer Group, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x ECF CASE

SHARAGANO HOLDINGS, INC.,

Plaintiff,

Civil Case No.: 07 Civ. 6244 (NRB)

v.

JMB APPAREL DESIGNER GROUP, INC.,

Defendant.

-----x

SUPPLEMENTAL AFFIDAVIT OF BEN CHOY

STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

BEN CHOY, being duly sworn, deposes and states as follows under penalties of perjury:

1. I am President of JMB Apparel Designer Group, Inc. ("JMB") the named defendant herein and submit this supplemental affidavit to respond to the blatant factual misrepresentations, inaccurate conjecture and false assertions contained in the "Supplemental Affidavit of Jackie Pappas," sworn to on July 26, 2007 (the "Suppl. Affid."), that plaintiff

Sharagano Holdings, Inc. ("SHI") filed electronically on July 27, 2007, a copy of which was served electronically last Friday afternoon and delivered my Federal Express this morning.

2. Ms. Pappas, who styles herself as the public relations and marketing director for SHI, speculates in her supplemental filing that JMB ladies suits that she observed on July 21, 2007 in a Lord & Taylor's store in Paramus, New Jersey, were part of JMB's "Fall 2007 products" – apparently determined solely by her subjective observation of the "look and feel" of such garments (Suppl. Affid., ¶ 4). Ms. Pappas' conjecture is demonstrably false as in fact JMB has not even begun to ship any Fall 2007 line suits to Lord & Taylor, and won't begin doing so until sometime in late August 2007, consistent with the orders that Lord & Taylor has placed for such suits. A copy of Lord & Taylor's Summary Selling Report for JMB Fall Line 2007 purchases is annexed hereto as **Exhibit 12** and confirms that 4 JMB styles from its Fall Line 2007 have been ordered by Lord & Taylor and zero (0) units have shipped to date.

3. Rather, what Ms. Pappas must have observed were left over *Atelier* Spring Line 2007 suits, shipped in March, April and May 2007, almost all of which Lord & Taylor has already begun to mark down and move to its sale racks (a fact that Ms. Pappas conveniently fails to disclose). Annexed hereto as **Exhibit 13** is Lord & Taylor's current selling report for JMB's garments sold the week ending July 22, 2007.

4. This report (exhibit 13) shows the number of JMB garments sold during the week ending July 22, 2007 in all Lord & Taylor stores and the number of JMB garments that are still currently on the Lord & Taylor floors (exclusive of those styles delivered earlier which are already on the store's liquidation racks). The report confirms that of the seven JMB styles sold to Lord & Taylor, six have already been marked down from their original selling prices of \$240.00/\$220.00 to reduced selling prices of \$143.99/\$131.99, respectively. The report also

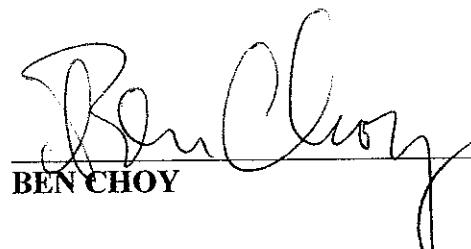
shows that all of these styles were shipped by JMB in March, April or May, 2007. One style is a re-order shipped on July 10, 2007 of a garment originally shipped in April 2007 (this style is not yet marked down). All of these garments are JMB's *Atelier* brand suits and the report lists them as such.

5. Perhaps what confused Ms. Pappas in her thinking and caused her to speculate that the garments she observed on July 21, 2007 are part of JMB's Fall 2007 line suits, when in fact they were still part of JMB's Spring Line 2007, is the fact that JMB routinely uses 4-season weight and look fabrics for all of its *Atelier* suits, and thus it is understandable that someone more familiar with lesser quality garments might in fact confuse one for the other, particularly when such person has no knowledge whatsoever of JMB's business or product line.

6. However, what is most revealing in Ms. Pappas' Suppl. Affid. is the fact that she, too, cannot state with certainty what the illegible script says on the label that she observed, as the very best that she can say is that it "appeared to say 'Sharagano' in script writing followed by the name 'Atelier'" (Suppl. Affid., ¶ 2; emphasis added). As made clear in my prior affidavit sworn to on July 13, 2007, JMB does not use the word "Sharagano" on any of its *Atelier* garments, and has not done so since prior to February 2006 when it had the right to do so under its License Agreement. As my prior affidavit also made clear, JMB's illegible script design does not and was never intended to say or suggest the word Sharagano.

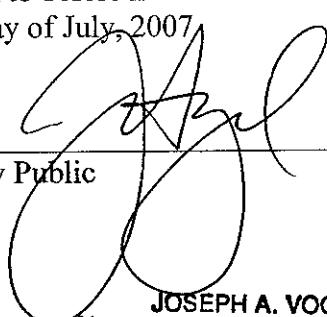
7. In light of the above, and for the reasons stated in my prior affidavit sworn to on July 13, 2007, SHI's order to show cause should not be signed and JMB respectfully urges this Court to decline SHI's request for injunctive relief. Because of the utter lack of any demonstrated proof supporting plaintiff's claims – as highlighted by the demonstrably false

supplemental affidavit of Jackie Pappas – JMB respectfully renews its request that this Court consider awarding JMB its costs and fees in responding to SHI's baseless accusations.



BEN CHOY

Sworn to before me this
30th day of July, 2007



Notary Public

JOSEPH A. VOGEL
Notary Public, State of New York
No. 02VO4756050
Qualified in Nassau County
Commission Expires June 30, 20 11

Exhibit 12

MD CL	MFG	#	SRN	DESCRIPTION	COST/RETAIL			RECEIPTS			SALES			SL%	UNITS	\$	ON HAND	OO	CUM			
					CST	ORG	OWN	CUR	LOW	FST	LST	AGE	TOT	CUM	CUM\$	C%	MTD\$	WK1	CURU	CURS		
MFG 104 - ATELIER			CC	FQ -MAY 2007					182	70	123	36.5	21	2.4	4	11	10	1.2	7.4	126	17.5	8
			CC	UNIT TOTALS - MTD-TOTS= DOLLAR TOTALS (X1000)					44.2													
MFG 104 - ATELIER			CC	FU - CC ADDED BY BRW																		
14 104 101234 52860368 BULK 25 SM DTL SK			85.00	220.00	220.00	220.00	220.00	220.00	240.00	240.00	240.00	240.00	0	0	0	0	0	0	294	314	284	
10 104 108221 52860351 BULK 25 PS WSTDT			80.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	0	0	0	0	0	0	116	285.0	24	
18 104 108245 52860344 BULK 3B SWINGJKT			90.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	0	0	0	0	0	0	116	285.0	24	
10 104 123212 52860377 CHRL2B FLP PKT			90.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	240.00	0	0	0	0	0	0	116	285.0	24	
CC UNIT TOTALS - REG-TOTS= DOLLAR TOTALS (X1000)																						
MFG UNIT TOTALS - REGULAR DOLLAR TOTALS (X1000)																						
MFG UNIT TOTALS - MARKDOWN DOLLAR TOTALS (X1000)																						
MFG UNIT TOTALS - COMBINED DOLLAR TOTALS (X1000)																						

NUMBER OF UNITS ON ORDER ("00")

OF UNITS RECEIVED TO DATE

LISTED SELLING PRICE

Exhibit 13

MFG 104 - ARTICER		CC - NO COOPERATOR CODE	
* CC UNIT TOTALS - REB-SELLERS		72.00 143.50 163.50 143.50 06/16 07/03 1	
DOLLAR TOTALS (\$1000)		3 .3	

MFG 104 - ARTICER		CC - APRIL 2007	
* CC UNIT TOTALS - REB-SELLERS		\$9.00 246.00 249.00 245.00 244.00 04/03 07/10 1	
DOLLAR TOTALS (\$1000)		192 46.1	

MFG 104 - ARTICER		CC - APRIL 2007	
* CC UNIT TOTALS - REB-SELLERS		\$9.00 246.00 249.00 245.00 244.00 04/03 07/10 1	
DOLLAR TOTALS (\$1000)		192 46.1	
* 10 104 102113 4661212 BLK EIP MFT PT		82.00 246.50 143.50 143.50 03/26 03/26 16	
* 10 104 1222693 4864256 GRV MFT DB PT		62.00 246.00 143.50 143.50 03/26 03/26 16	
* 14 104 1562114 4664284 TAN DB MFT PT		80.00 220.00 131.50 131.50 04/03 04/03 15	
* CC UNIT TOTALS - REB-SELLERS		258 197	
DOLLAR TOTALS (\$1000)		67.2 22.2	
* CC UNIT TOTALS - COMBINED		490 225	
DOLLAR TOTALS (\$1000)		113.2	

MFG 104 - ARTICER		CC - MAY 2007	
* CC UNIT TOTALS - REB-SELLERS		\$9.00 163.50 143.50 143.50 05/07 05/07 10	
DOLLAR TOTALS (\$1000)		96 21	

MFG 104 - ARTICER		CC - MAY 2007	
* CC UNIT TOTALS - REB-SELLERS		\$9.00 163.50 143.50 143.50 05/07 05/07 10	
DOLLAR TOTALS (\$1000)		96 21	

TOTAL SOLD WEEK
 ENDING 7/22/07
 TOTAL SOLD TO DATE
 TOTAL DELIVERED
 DELIVERY DATES
 CURRENT SELLING PRICE
 ORIGINAL PRICE
 COST

* RE-ORDER